

# The Orissa Gazette



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## **LABOUR & EMPLOYMENT DEPARTMENT**

### **NOTIFICATION**

The 30th January 2009

No. 844—li/1(B)-106/1998-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 2nd January 2009 in Industrial Dispute Case No. 165 of 2008 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the Industrial Dispute between the Management of Orissa Retired Government Employees M.P.C.S. Ltd., Bhubaneswar and their workman Shri Somanath Mohanty was referred for adjudication is hereby published as in the Schedule below :

### **SCHEDULE**

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 165 OF 2008

Dated the 2nd January 2009

*Present :*

Shri P. C. Mishra, o.s.j.s. (Sr. Branch),  
Presiding Officer, Industrial Tribunal,  
Bhubaneswar.

*Between :*

The Secretary, . . . First Party—Management  
Orissa Retired Government  
Employees M.P.C.S., Ltd.,  
Goutamnager, Bhubaneswar.

And

Shri Somanath Mohanty, . . . Second Party—Workman  
Qr. No. A.E.-94, Bhimatangi Housing Board,  
Upper Phase, Bhubaneswar, Orissa.

*Appearances :*

None	. . . For the First Party—Management
Shri Somanath Mohanty	. . . For the Second Party—Workman himself

**AWARD**

Originally, the Government of Orissa in the Labour & Employment Department had referred the following dispute for adjudication by the Presiding Officer, Labour Court, Bhubaneswar vide its Order No. 10872—li/I(B)-106/1998-LE., dated the 8th October 1998 but subsequently it transferred the dispute to be adjudicated by the Presiding Officer, Industrial Tribunal, Bhubaneswar vide its Order No. 4138—li/21-32/2007-LE., dated the 4th April 2008.

“Whether the action of the management of M/s. Orissa Retired Government Employees Multipurpose Co-op. Society Ltd., Bhubaneswar in dismissing the services w.e.f. 6th December 1995 of Shri Somanath Mohanty, salesman is legal and/or justified ? If not , what relief Shri Mohanty is entitled to ? ”

2. The case of the workman in brief is that he was working as a Salesman under the management with effect from the 2nd November 1987 on a monthly salary of Rs. 300 which was subsequently enhanced to Rs. 700 per month from 1994. According to the workman, since he had represented many a times to the management for paying him wages in accordance with the wages fixed by the Government, the management became vindictive towards him and on false allegation of misappropriation terminated his service w.e.f. 6th December 1995. It is pleaded by the workman that while terminating his service the procedures laid down under the Act have not been followed. Further it is stated that the misconducts alleged were neither enquired into nor he was afforded with reasonable opportunity to defend himself against the action of the management. Stating the action of the management to be illegal one, the workman has prayed for his reinstatement in service with back wages.

3. The management filed its written statement stating therein *inter alia*, that the workman was employed under contract basis but no appointment order was issued to him. It is pleaded that the workman while working as Salesman found to have committed serious misconduct, in as much as, during the encumbency of the workman shortages were noticed from the store and as the audit report revealed his liability his services were terminated. The management in the aforesaid premises has prayed to answer the reference in the negative as against the workman.

4. On the basis of the pleadings of the parties, the following issues have been framed :—

**ISSUES**

- I. Whether the action of the management of M/s. Orissa Retired Government Employees Multipurpose Co-op. Society Ltd., Bhubaneswar in dismissing the services w.e.f. 6th December 1995 of Shri Somanath Mohanty, Salesman is legal and/or justified ?
2. If not, what relief Shri Mohanty is entitled to ?

5. During hearing of the dispute, the management remained absent and did not take any step for which it was set *ex parte* vide Order No. 24, dated the 3rd August 2004. The workman filed affidavit evidence and proved his joining report, dated the 2nd January 1987 & Service Certificate granted in his favour by the Secretary of the management, which have been marked as Exts. 1 and 2 respectively.

6. The unassailed evidence of W.W. No. 1 (workman) reveals that he was working as a Salesman under the management from the year 1987 till 5th December 1995 and Ext. 1 reveals that he joined as such on the 2nd November 1987. It further reveals from his evidence that even if he had worked continuously to the satisfaction of the management and more particularly for more than 240 days preceding his date of termination, the management neither complied with the provisions of the I.D. Act., nor followed the principles of natural justice while doing away with his service. Ext. 2, the copy of Service Certificate shows about the engagement of the workman under the management. The unchallenged evidence of the workman, as aforesaid read with Exts. 1 and 2 leads this Tribunal to draw in inference that the engagement of the workman under the management was continuous one and therefore, it was obligatory on the part of the management to comply with the provisions of Section 25-F of the I. D. Act while effecting termination of service of the workman and non-compliance of the same by the management renders the order of termination illegal as well as unjustified one.

7. In the result, therefore, the workman is held entitled to reinstatement in service and a compensation of Rs. 5,000 (Rupees five thousand only) in lieu of back wages. The management is directed to pay the aforesaid compensation to the workman within a period of two months from the date of publication of this Award in the Official Gazette.

The reference is answered accordingly.

Dictated and corrected by me.

P. C. MISHRA

2-1-2009

Presiding Officer  
Industrial Tribunal  
Bhubaneswar

P. C. MISHRA

2-1-2009

Presiding Officer  
Industrial Tribunal  
Bhubaneswar

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By order of the Governor

K. C. BASKE

Under-Secretary to Government